

The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

Paper No. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JACQUES MULLER

Appeal No. 2001-2038
Application No. 09/002,950

ON BRIEF

Before HAIRSTON, KRASS and SAADAT, Administrative Patent Judges.
KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 10, 12, 13 and 15-20.

The invention is directed to a compact portable mobile telephone and, more particularly, to a housing for such a telephone, wherein the housing comprises a flap which has a removable battery.

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Representative independent claim 10 is reproduced as follows:

10. A portable mobile telephone, comprising:

a body, a removable battery, and a flap hinged to said body to move between an operative position in which the flap is located in front of the mouth of a user, and a second position folded on top of said body, wherein said flap forms a sound reflector which, in said operative position, redirects the sound of the user's voice from said flap to a microphone in said body inboard of said flap, and wherein said removable battery constitutes virtually all of said flap so that said battery itself, forms said reflector.

The examiner relies on the following references:

Mischenko	5,117,073	May 26, 1992
Takagi et al. [Takagi 329]	5,251,329	Oct. 5, 1993
Takagi [Takagi 998]	5,260,998	Nov. 9, 1993

Claims 10, 12, 13 and 15-20 stand rejected under 35 U.S.C. 103. As evidence of obviousness, the examiner offers Mischenko and Takagi 998 with regard to claims 10 and 12, adding Takagi 329 with regard to claims 13 and 15-20.

Reference is made to the briefs and answer for the respective positions of appellant and the examiner.

OPINION

With regard to claims 10 and 12, the examiner cites

Mischenko for teaching the claimed subject matter but for a removable battery constituting virtually all of the flap so that the battery, itself, forms the reflector for reflecting a user's voice from the flap to a microphone in the body. The examiner turns to Takagi 998 for a teaching of a removable battery 42 which constitutes a flap. The examiner concludes that it would have been obvious to incorporate the use of a removable battery in a flap, as taught by Takagi 998, in Mischenko. The examiner's rationale is bottomed on the obviousness of shifting locations of prior art parts.

We will not sustain the rejection of claims 10 and 12 under 35 U.S.C. 103.

We agree with the examiner that Mischenko discloses a portable mobile telephone having a body 101/102 and a flap 103 hinged to the body, as claimed. Mischenko also, obviously, uses a battery, probably a "removable" one, albeit not disclosed as constituting "virtually all of said flap." While not disclosed as such, flap 103 clearly acts as a sound reflector as well as does appellant's battery since the flap and body are similarly angled and the microphone 107 of Mischenko, like appellant's, is placed in the body. However, claim 10 specifically requires that the "battery, itself, forms the reflector." Claim 10 is clearly

directed to appellant's second embodiment, described at the bottom of page 4 of the specification, wherein the battery constitutes "in itself virtually all of the flap and in particular to define the surface from which sound is reflected towards the microphone."

Takagi 998 does disclose a removable battery 42 on the rear of a telephone flap [see Figures 4, 5 and 6]. However, the flap of Takagi 998 includes many other elements, including, for example, logic unit 28, printed wiring board 26, and switch 36. Accordingly, however "virtually all of said flap" in claim 10 is interpreted, it is clear that the battery of Takagi 998 does not constitute "virtually all of said flap." Moreover, even if, arguendo, the artisan would have been led to combine Mischenko and Takagi 998, it appears to us that the best that could be achieved is to attach a battery on the rear side of Mischenko's flap 103. We can find absolutely no suggestion in either of the applied references to replace Mischenko's flap 103 with a battery so as to use the battery, itself, as a sound reflector

It is true, as the examiner argues, that the flap of Mischenko has no such electronic elements and, so, the placement of a battery in place of the flap portion of Mischenko, as suggested by Takagi 998, would result in the invention, as

claimed.

The question, however, is what would have led the artisan to take only Takagi 998's teaching of placing a battery on the flap portion of a portable telephone and employ such a teaching to place Mischenko's battery as a substitute for the flap portion? Certainly, nothing in Mischenko suggest moving the battery from the body of the telephone to the flap portion and there is no indication that Mischenko needs any improvement in this regard. Takagi 998 places the battery in the flap section but there is no indication that it is placed there in order to constitute "virtually all of said flap so that said battery, itself, forms said reflector." Takagi 998 has other elements on the flap, ostensibly powered by the battery which is also on the flap. Merely because Takagi 998 places a removable battery pack 42 on the rear of the flap portion of his telephone would not, in our view, suggest placing a battery as a substitute for the flap portion of Mischenko, without some reason to do so. The examiner says it is for the "purpose of providing a flat, small, folding portable radio telephone set meeting ergonomic requirements in order to compactly fold up the radio telephone set" [answer-page 5]. But, Mischenko already provides for such a flat, small,

folding radio telephone set, with the battery positioned as it is in Mischenko, so there would appear to be no reason to change its location.

Accordingly, we will not sustain the rejection of claim 10, or, it follows, the rejection of claim 12 dependent thereon, under 35 U.S.C. 103.

With regard to claims 13 and 15-20, these claims are directed to a first embodiment of appellant's invention wherein a base, or a housing is provided as the flap and the battery is inserted thereinto. The flap acts as the sound reflector. The examiner adds Takagi 329 for the teaching of a base 17 in Figure 3 mounted at the end of a battery and contends that it would have been obvious to incorporate the use of such a base, mounted at the end of a battery, in Mischenko, as modified by Takagi 998, for extending the time of use of the radio telephone with prolonged power. We disagree.

Takagi 329 is not directed to a radio telephone with a flap that moves between an operative position and a closed position so it is unclear why the artisan would look to Takagi 329 for any teaching of providing power in such telephones. While the combination of Mischenko and Takagi 998 may provide for attaching

a battery to the flap of Mischenko, that attachment would be to the rear of Mischenko's flap and there would be no suggestion of a "base which is mounted on only one end of said battery and which is hinged to said body," as set forth in independent claim 15. While Takagi 329 may show a base which is mounted on only one end of the battery, that base is not "hinged to said body" and there is no suggestion, in any of the applied references, for providing such a hinged base mounted on only one end of the battery.

Independent claim 19 does not call for a hinged base as in claim 15 but claim 19 does require that the flap consists "essentially only of a removable battery..." Again, while the combination of Mischenko and Takagi 998 might suggest attaching a battery to the rear side of Mischenko's flap, there is no suggestion of replacing the entire flap with a removable battery, essentially making the battery that flip-down flap from which sound is reflected into the microphone located in the body of the radio telephone.

Accordingly, we will not sustain the rejection of claims 13 and 15-20 under 35 U.S.C. 103.

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The examiner's decision is reversed.

REVERSED

KENNETH W. HAIRSTON)	
Administrative Patent Judge)	
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ERROL A. KRASS)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
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)	
MAHSHID D. SAADAT)	
Administrative Patent Judge)	

EK/RWK

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SUGHRUE MION ZINN MACPEAK & SEAS
2100 PENNSYLVANIA AVENUE NW
WASHINGTON, DC 20037